

Department of Homeland Security

§ 245a.17

(A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or

(B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or

(C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

(3) *Asylum applicants.* An eligible alien who filed an asylum application prior to January 1, 1982, and whose application was subsequently denied or whose application was not decided by May 4, 1988.

(4) *Aliens considered to be in unlawful status.* Aliens who were present in the United States in one of the following categories were considered to be in unlawful status:

(i) An eligible alien who was granted voluntary departure, voluntary return, extended voluntary departure, or placed in deferred action category by the Service prior to January 1, 1982.

(ii) An eligible alien who is a Cuban or Haitian entrant (as described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 and at § 212.5(g) of this chapter), who entered the United States before January 1, 1982. Pursuant to section 1104(c)(2)(B)(iv) of the LIFE Act, such alien is considered to be in an unlawful status in the United States.

(iii) An eligible alien who was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982.

(iv) An eligible alien who entered the United States before January 1, 1982, and whose entries to the United States subsequent to January 1, 1982, were not documented on Form I-94.

§ 245a.16 Continuous physical presence from November 6, 1986, through May 4, 1988.

(a) The Service will determine whether an alien was continuously physically present in the United States from November 6, 1986, through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application evidence establishing his or her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Evidence establishing the alien's continuous phys-

ical presence in the United States from November 6, 1986, to May 4, 1988, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

(b) For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

(c) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous physical presence as required at the time of filing an application under this section.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.17 Citizenship skills.

(a) *Requirements.* Applicants for adjustment under LIFE Legalization must meet the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Unless an exception under paragraph (c) of this section applies to the applicant, LIFE Legalization applicants must establish that:

(1) He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter; or